MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2017/2018

UCV4622 – CIVIL PROCEDURE II

(All Sections / Groups)

16 OCTOBER 2017
READING TIME :09:00AM – 09:15AM
(15 MINUTES)
ANSWERING TIME: 09:15AM – 12:15PM
3 HOURS

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of **5** pages with **5** Questions only.

3. This paper consists of two parts. In **PART A** is **COMPULSORY.** In **PART B** attempt **ONLY ONE** out of **TWO** questions. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall CLEAN and ORIGINAL copy of the Rules of Court 2012.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY QUESTION

QUESTION 1

(a) Mastura binti Haji Bakhil is a well-known fashion designer in clothing as well as in home interior. She is also the managing director of Swan House Sdn Bhd ("SHSB"), a prominent fashion company that had undertaken large contracts in most of shopping mall in Malaysia in supplying fashionable clothing. Nyonya Mansur is a managing director for Classic Fashionista Sdn Bhd ("CFSB"), a medium sized clothing company which majoring in selling traditional clothes, based in Melaka. SHSB and CFSB has entered into a contract on 12 January 2017 in which SHSB supplied 30 pairs of designer traditional clothing to CFSB at the price of RM699.00 each and 30 pairs of shawls at the price of RM150.00 each. Upon delivering the items to CFSB at its business premise in Ayer Keroh, Melaka, a sale order dated 01 March 2017 was signed by Nyonya Mansur herself. The payment of the sale order was to be paid within 14 days from the date thereon.

Mastura has on two different dates namely 02 Mei 2017 and 28 Jun 2017 sent letter to CFSB and Nyonya Mansur, demanding the said payment but to no avail. Mastura had also found out that the clothes that she had sent to Nyonya Mansur was successfully sold.

Mastura is now seeking your assistance to represent her in an action against Nyonya Mansur. Draft a proper pleading on behalf of Mastura to recover the said sum.

(15 marks)

(b) Explain any three (3) circumstances where leave to amend pleadings may not be granted. Support your answer with relevant decided cases.

(10 marks)

(Total: 25 Marks)

Continued...

QUESTION 2

(a) "One of the statutory requirements of which the court may be satisfied before making an order of attachment before judgment is that the plaintiff has a good cause of action."

(i) What are the other statutory requirements before an order of attachment before judgment may be made by the court?

(5 marks)

(ii) Compare and distinguish between an order of attachment before judgment and a Mareva injunction.

(10 marks)

(b) Explain the difference between Bullock Orders and Anton Pillar Orders.

(10 marks)

(Total: 25 marks)

QUESTION 3

(a) Plaintiff has filed his claim against Defendant at the Sessions Court Temerloh vide Civil Case No: 53-256-17 for compensation and damages as a result of an accident at KM 13, Jalan Temerloh - Jerantut on 28 December 2016 involving Plaintiff's vehicle and the Defendant's vehicle. At the trial of the said civil suit on 27 March 2017, Plaintiff had called 8 witnesses and on 29 March 2017 Defendant had also called his witness and closed his case. The case was adjourned to enable the parties to submit their written submissions before the learned Sessions Court Judge to make her decision. After numerous adjournments, finally the learned Sessions Court Judge gave her decision on 20 June 2017 where she apportioned the liability 70% on Plaintiff and 30% on Defendant. Defendant intends to appeal against the decision of the Sessions Court Judge.

Advise Defendant on the following:-

(i) the procedure for the appeal.

(4 marks)

(ii) whether evidence not adduced at the trial before the Sessions Court Judge may be adduced at the appeal stage.

(6 marks)

Continued...

(b) Plaintiff had entered a judgment in the Shah Alam Magistrate's Court against Defendant for the sum of RM20,000.00 together with interest on 25 January 2014. To the best knowledge of the Plaintiff, Defendant works as a legal clerk in a legal firm in Klang earning about RM2,200 per month. Plaintiff also knew that the Defendant owned a motorcycle and has a joint account with his wife in Bank Sama-Sama. Plaintiff wishes to execute the judgment taken on 25 January 2014 against the Defendant.

Advise Plaintiff.

(10 marks)

(c) "The law of stay of execution as it stands has developed in a manner that the statutory right of appeal is not recognised neither much thought is given to the Federal Constitution and the presence of the appellate court to address appeals and to be the final arbiter of dispute. Such state of affairs has created much controversies and unfair prejudice, to litigants and thereby often embarrassed decision making process of trial courts."

Per Hamid Sultan Abu Backer JC in *KMA Marketing Sdn Bhd v MBF Leasing Sdn Bhd and Others* [2007] MLJU 672

Discuss the law on stay of execution and the requirements from the applicant for the Court to consider.

(5 marks)

(Total: 25 Marks)

Continued...

PART B: ANSWER ONLY ONE (1) QUESTION

QUESTION 4

(a) "In the absence of any express conditions regarding the inclusion of any of the documents in the agreed bundle of documents, speaking for myself, I have always taken the agreed bundle in a civil case to mean as follows without meeting any contradiction or any serious contradiction from any member of the Bar or an appellate court in my decades at the Bar or on the Bench".

As per Peh Swee Chin FCJ in *Jaafar bin Shaari & Anor (Suing as administrators of the estate of Shofiah Bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693.

Discuss the above statement.

(5 marks)

(b) The plaintiffs' claim for RM30,904.00 being advance made to the defendant was denied by the defendant. At the hearing, the plaintiffs' representative was present together with their counsel. The defendant was absent but his counsel was present. Thereafter, on the oral application of the plaintiffs' counsel, the learned magistrate gave judgment in favour of the plaintiffs.

Defendant wish to set aside the judgment given by the learned magistrate.

Advise the Defendant.

(8 marks)

(c) The plaintiff claimed against the defendants for a sum of RM2 million being the balance of monies due and owing pursuant to a letter of undertaking given by the defendants. The plaintiff sought for the directions of the court under O 35 r 4(1) of the Rules of Court 2012 (ROC 2012) that the defendants begin by opening their case as the burden of proof of the issues lies on the defendants. It was submitted that the defendants should begin by opening their case by virtue of O 35 r 4(6) of the ROC 2012.

Discuss the issue above.

(8 marks)

Continued....

(d) "Where there is a point of law which, if decided in one way, is going to be decisive of litigation, advantage ought to be taken of the facilities afforded by the rules of Court to have it disposed of at the close of pleadings or very shortly afterwards".

Briefly discuss the above statement.

(4 marks)

(Total: 25 Marks)

QUESTION 5

The first defendant was a main contractor for a project and the second defendant was a subcontractor of the first defendant. The plaintiff, in accordance to terms and conditions by a letter dated 2 April 2016 ('the said agreement'), agreed to supply ready-mixed concrete to the first defendant. The plaintiff supplied concrete to the project site and the delivery orders, invoices and statements of accounts issued by the plaintiff bore the stamps and signatures of the second defendant. However, all payments were made by the first defendant except for the amount claimed by the plaintiff against both the defendants. The first defendant claimed that since all documentation proving deliveries of concrete were in second defendant's name, thus the first defendant had no case to answer and not liable to the plaintiff's claim. The second defendant argued that it was not privy to the said agreement made between the plaintiff and the first defendant. Subsequently, it was agreed the case would be determined by a single issue of who was liable to pay for the concrete sold and delivered to the first defendant. However, the issue was revised further to state which defendants would be liable to pay the plaintiff. During the case, the second defendant chose to adduce evidence but the first defendant did not do so.

Based on the above, discuss the followings:-

(a) The first defendant's choice of no case to answer.

(10 marks)

(b) Order of speech of the parties above.

(7 marks)

(c) Explain the meaning of agreed bundle.

(4 marks)

(d) Explain on what preliminary cross-examination witness is.

(4 marks)

(Total: 25 Marks)

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